IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1972 OF 2007

Smt.Indu T. Patil ...Petitioner

V/s.

The State of Maharashtra & Ors. ...Respondents

Mrs.A.S. Malvankar with C.P. Deogirikar for Petitioner.
Mr.P.I. Khemani AGP for Respondent No.1.
Mr.Anand V. Patwardhan for Respondent No.2 to 4.

CORAM : V.M. KANADE, J.

DATED : 4th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for Petitioner and learned counsel for the Respondent No.2 to 4.

2. On the last date matter was heard finally at the admission stage. However, one opportunity was given to the parties to explore possibility of settlement. It was made clear that if the parties are unable to settle the matter, no further arguments will be entertained and writ petition would be disposed of finally since the arguments were already concluded on the last date itself.

3. Today both the counsel appearing on behalf of the parties

submitted that it was not possible to settle the matter. Hence, Rule. Rule is made returnable forthwith with consent of the parties.

4. The Petitioner takes exception to the order passed by the Consumer Disputes Redressal Commission whereby it was pleased to recall its order dated 11/08/05 in review petition filed by the Respondent No.2 and 3, by its order dated 29/09/06.

5. Learned counsel for the Petitioner submitted that the Consumer Disputes Redressal Commission did not have power to review its own order since no such power is confirmed by the said Act. In support of said submission, he has relied on the number of judgments of the Apex Court as also High Court. He relied on the judgment of the Apex Court in the Case of **Jyotsana Arvindkumar Shah & Ors V/s. Bombay Hospital Trust reported in (1999) 4 SCC 325**. He also relied on judgment of **M/s. Scooter India Ltd. V/s. Mr. Pradeep Kumar reported in 2000(I) CPR 10 (NC)**. He further relied on the judgment of Andhra Pradesh High Court in the case of **M/s. Eureka Estates Pvt. Ltd. V/s. A.P. State Consumer Disputes Redressal Commission and & Ors. reported in AIR 2005**

Andhra Pradesh 118. He also relied on the judgment in the case of **Meera Bhanja(Smt) V/s. Nirmala Kumari Choudhury(Smt) reported in (1995)1 SCC 170**. Learned counsel for the Petitioner submitted that the Consumer Disputes Redressal Commission having partly allowed the complaint awarded by its order dated 11/08/05 could not have recalled said order by passing a impugned order dated 29/09/06.

6. Learned counsel for the Respondent No.2 to 4, on the other hand, submitted that the Petitioner had suppressed material facts from the Consumer Disputes Redressal Commission and in such circumstances, it was open for the Consumer Disputes Redressal Commission to recall its earlier dated 11/08/05. He relied on the judgment of the Apex Court in the case of **United India Insurance Co. Ltd V/s. Rajendra Singh & Ors reported in (2000)3 SCC 581.** He also relied on the judgment of the Apex Court in the case of **Ram Chandra Singh V/s. Savitri Devi & Ors reported in (2004) 12 SCC 713**. He submitted that in case where fraud was practiced on the Tribunal, it was always open for the Tribunal to recall its earlier order by exercising its inherent power.

7. In my view, submissions made by the learned counsel for the Petitioner has to be accepted in view of ratio of the judgment in the case of **Jyotsana Arvindkumar Shah(Supra)** in which the Apex Court in categorical terms has held that State Commission has no power to recall or review its order. Same view is taken by the Division Bench of Andhra Pradesh in the case of **M/s. Eureka Estates Pvt. Ltd(Supra).** Ratio of the judgment in the case of **United India Insurance Co. Ltd(Supra)** will not apply to the facts of the present case since in the said case, Motor Accident Claims Tribunal has recalled its order while exercising inherent power U/s.151 of CPC. It is an admitted position that Consumer Tribunal cannot exercise its power U/s.151 of CPC and therefore, ratio of the said judgment would not apply to the facts of the present case. Hence, impugned order is set aside and quashed.

8. However, liberty is granted to the Respondents to challenge the earlier order dated 11/08/05 by either filing an Appeal before National Commission or by filing an writ petition under Article 226 and 227 of Constitution of India. Writ Petition is allowed in the above terms.

V.M. KANADE, J.